In the High Court of Uttaranchal, at Nainital.
First Appeal No. 36 of 2005

Smt. Anandi Bisht
W/o Mahesh Chandra Bisht
D/o Dharamanand Pandey,
R/o C/o Tularam Pandey,
Village Behta Chageti Patti
Rangur Pali Tehsil and
District Almora .....Appellant.

Versus

1- Mahesh Chandra Bisht
S/o Jai Dutt Bisht
Hall Niwasi Tehsil Officer Dhari
P.O. Dhari, District Nainital.

2- Judge, Family Court,
Nainital ..... Respondents.

Sri B.S. Adhikari, learned counsel for the appellant.
Sri P.C. Bisht, learned counsel for the respondent-wife.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 30-06-2006

This appeal has been filed against the order dated 6-4-2005, passed by Principal Judge, Family Court Nainital, in Misc. Case No. 22 of 2004, Smt. Anandi Bisht Versus Mahesh Chandra Bisht, whereby the application of the appellant filed U/O 9 Rule 13 C.P.C. alongwith the application filed U/S 5 of Limitation Act was rejected.

2- Brief facts of the case are that Mahesh Chandra Bisht and Smt. Anandi Devi were married in the month of February 1982. Out of their wedlock, four children were born. Out of these, two have died and two daughters are surviving and are living with the husband. According to the husband, his wife Anandi Devi has changed her attitude and began to beat her children. On 13-11-2003 she left her husband's

house and went to her Maika. The husband went to her Maika to fetch her, but she refused to return to his house. The husband Mahesh Chandra Bisht filed a suit U/S 9 of Hindu Marriage Act, for restitution of conjugal rights before the Principal Judge, Family Court Nainital which was numbered as Matrimonial Suit No. 3/2004. The appellant Smt. Anandi Bisht appeared before the Family Court but lateron she absented herself and did not take part in the proceeding of the suit. Hence the Judge, Family Court heard the suit exparte and passed the exparte decree against Smt. Anandi Bisht vide judgment order dated 18-6-2004.

3- Smt. Anandi Devi, on 23-11-2004, moved an application U/O 9, Rule 13 C.P.C. before the Principal, Judge Family Court, Nainital for setting aside the exparte judgment and decree dated 18-6-2004 along with application U/S 5 Indian Limitation Act for condonation of delay in filing the application for setting aside the expart decree. The ground for delay was pleaded that her village is about 120 kilometers far from the Civil Courts and she was represented by an advocate, but she was not intimated about the fate of the case. The Principal Judge, Family Court invited objections against the said application and after hearing the parties came to the conclusion that the delay in filing the application is of about 8 months and did not find and sufficient ground to allow the application. According her application was rejected.

4- Feeling aggrieved the wife/appellant has filed this appeal.

5- We have heard learned counsel for the parties and perused the record.

6- In the present case the parties have two grown-up daughters and the husband has filed suit U/S 9 of

Hindu Marriage Act for restitution of conjugal rights and there is every possibility of reconciliation between the parties. The Hon'ble Supreme Court in the case of **B.S. Joshi and others Vs. State of Haryana and another**, reported in **JT 2003 (3) SC 277** has emphasized that the special features in matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes. Therefore, it will be in the fitness of things to allow the appeal and the matter may be remanded back to the Principal Judge, Family Court for decision.

7- The appeal is allowed. The impugned order dated 6-4-2005 passed by the Principal Judge, Family Court, Nainital in Misc. Case No. 22/2004, rejecting the application of the appellant U/S 9 rule 13 C.P.C. is hereby quashed. The exparte decree dated 18-6-2004, passed by Principal Judge, Family Court, Nainital in Matrimonial Suit No. 3/2004 is also set aside and the matter is remanded back to the Family Court concerned for deciding the same afresh. The Family Court concerned, shall try to reconcile the matter first, and if reconciliation is not possible, then shall proceed in accordance with law in shortest period of time.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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